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No. 10-276

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT C. BRUNER and KATHERINE S. BRUNER, husband and wife, et al.,

Petitioners,

vs.

BERT HARTSFIELD, in his official capacity as Property Appraiser of Leon County, Florida; et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Florida First District Court Of Appeal

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REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Talbot D'Alemberte
Counsel of Record
D'Alemberte & Palmer, PLLC
P.O. Box 10029
Tallahassee, Florida 32302
850-325-6292
dalemberte@dalemberteandpalmer.com

Additional counsel listed on inside cover

Douglas S. Lyons
Marsha Lyons
Lyons & Farrar
325 N. Calhoun Street
Tallahassee, Florida 32301
850-222-8811

James G. Feiber, Jr.
Salter Feiber Murphy Hutson
& Menet, P.A.
P.O. Box 357399
Gainesville, Florida 32635
352-376-8201

Susan L. Kelsey
Kelsey Appellate
Law Firm, P.A.
115 N. Calhoun St.
Tallahassee, Florida 32301
850-681-3511

William Slaughter
Haskell Slaughter Young
& Rediker, LLC
1400 Park Place Tower
2001 Park Place North
Birmingham, Alabama 35203
205-251-1000

Attorneys for Petitioners

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REPLY

The State Scheme Setting the Level of Tax Benefits Through Duration of Residential Ownership Violates The Privileges And Immunities Clauses

The Respondent Florida Department of Revenue,[1] along with the property appraisers of Palm Beach and Charlotte Counties, confuse the operative features of SOHA and Amendment 1 ("portability").

First, on page 7 of the State Brief, these Respondents state that, "upon purchasing a home and obtaining homestead status," a lifelong Florida resident or a new migrant resident from another state becomes "eligible to receive exactly the same benefit under the SOHA provisions." The spinning efforts crystallize with the next paragraph: "The right to travel decisions of this Court cited by Petitioners are inapt because in those cases, the State based the benefit awarded on the length of time a person lived in the State, which is not a requirement for Florida homestead exemption eligibility."

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[1] For the convenience of the Court, we will refer to the brief filed by the Florida Department of Revenue and joined by various other officials as the "State Brief" and the other brief, filed by Leon County and others, as the "Leon County Brief."

To the contrary, under SOHA and Amendment 1, unlike traditional homestead exemption,[2] the length of time a person has been a resident of Florida and owned a homestead in this State has a direct impact on the amount of tax shelter provided. Thus, those who have been homesteading in Florida during the period of rapidly escalating property values have accumulated a tax shelter dating back for several years, measured by the difference between the assessed value and the 3% cap provided by SOHA. Under Amendment 1, this shelter is now "portable" and can be used when long-term Florida residents enter the market for Florida homes.

For a newly migrated resident who has recently bought a home but has not been a Florida resident for an appreciable period of time, the tax shelter is much less. Thus, this residency-based disparity in allotting the amount of benefits under SOHA and Amendment 1 is functionally identical to the residency disparity in the Alaska oil bounty scheme condemned in *Zobel v. Williams*, 457 U.S. 55 (1982).

The rationale of *Zobel*, coupled with the principles announced in *Saenz v. Roe*, 526 U.S. 489 (1999), require "strict scrutiny" in testing residency

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[2] Florida's homestead exemption, unlike SOHA and Amendment 1, contains no durational feature in any respect. Art VII., § 6, Fla. Const. (1968)

disparity in allotting tax benefits. By failing to address this standard, Respondents ignore the essence of the tax shelter scheme, which is inconsistent with fundamental holdings announced in *Zobel* and *Saenz*.

The Leon County Brief chides Petitioners for relying on Justice O'Connor's concurring opinion in *Zobel*. Leon County Brief pp. 12-14. Of course, Justice O'Connor was not entirely alone in her view. Justice Brennan's concurring opinion, joined by four other Justices, makes it clear that a majority of the Court in *Zobel* believed that the Alaska program offended the right to travel. Justice Brennan stated as follows:

> "I agree with Justice O'CONNOR that these more fundamental defects in the Alaska dividend-distribution law are, in part, reflected in what has come to be called the "right-to-travel." That right-or, more precisely, the federal interest in free interstate migration-is clearly, though indirectly, affected by the Alaska dividend-distribution law, and this threat to free interstate migration provides an independent rationale for holding that law unconstitutional.

Zobel, 457 U.S. at 66.

Nordlinger Was Not A "Right-To-Travel" Case That Required "Strict Scrutiny" Review.

All of the Respondents invite this Court to eschew certiorari jurisdiction based on Respondents' argument that *Nordlinger v. Hahn*, 505 U.S. 1. (1992), foreclosed any consideration of the right-to-travel issue here presented. However, Respondents fail to acknowledge that the right-to-travel issue was not presented in *Nordlinger* because of the absence of standing. *See* Petition page 25. Simply put, *Nordlinger* triggered only a "rational basis" standard under the Equal Protection Clause.

Because the right-to-travel issue is presented by this case, the Florida tax program giving greater benefit to long term homesteaders than to more recently arrived citizens requires strict scrutiny in accordance with the principles of *Saenz*. This Court should intervene when a state discriminates between long-term residents and newly arrived citizens in the grant of privileges (of a tax shelter) and immunities (from full assessment).

CONCLUSION

The Court should grant the Petition, reverse the Florida court's decision, and, if necessary, remand for further proceedings in which a standard of "strict scrutiny" is applied by the trial court.

Respectfully submitted,

Talbot D'Alemberte
D'Alemberte & Palmer, PLLC
P.O. Box 10029
Tallahassee, Florida 32302

Douglas S. Lyons
Marsha Lyons
Lyons & Farrar
325 N. Calhoun Street
Tallahassee, Florida 32301

James G. Feiber, Jr.
Salter Feiber Murphy Hutson
& Menet, P.A.
P.O. Box 357399
Gainesville, Florida 32635-7399

Susan L. Kelsey
Kelsey Appellate
Law Firm, P.A.
115 N. Calhoun St.
Tallahassee, Florida 32301

William Slaughter, Esq.
Haskell Slaughter Young
& Rediker, LLC
1400 Park Place Tower
2001 Park Place North
Birmingham, Alabama 35203

Thomas T. Gallion, III
Haskell Slaughter Young
& Rediker, LLC
P.O. Box 4660
Montgomery, Alabama 36103

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